

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CAITLIN BRICE; et al.,

Plaintiffs - Appellees,

v.

ALFRED GONZALEZ,

Objector - Appellant,

v.

ZOOM VIDEO COMMUNICATIONS,

INC., a Delaware corporation,

Defendant - Appellee.

No. 23-15103

D.C. No. 3:20-cv-02155-LB
U.S. District Court for Northern
California, San Francisco

**PLAINTIFFS-APPELLEES’
OPPOSITION TO “MOTION
FOR EXTENSION OF TIME TO
LET THE LOWER COURT
PROCESS THE APPEAL FEE”**

Plaintiffs-Appellees (“Plaintiffs”) respectfully submit this Opposition to the Objector-Appellant Alfred Gonzalez’s “Motion for Extension of Time to Let The Lower Court Process the Appeal Fee.” *See* Dkt. No. 6. There is no good cause for another extension.

First, Gonzalez does not dispute that he failed to timely pay his filing and docket fees by the original deadline when he filed his Notice of Appeal, as required by Circuit Rule 3-1, nor does he attempt to explain this failure.

Second, Gonzalez does not dispute that failed to timely pay his fees or file a proof of such payment with this Court despite a (1) January 25, 2023 Notice and (2) January 26, 2023 Order, both by the Court of Appeals, informing him that his fees were “past due” and that “[f]ailure to correct this deficiency may result in the dismissal of this case for failure to prosecute” under Circuit Rule 42-1. The Court of Appeal was clear that both payment and proof of payment were due within 21 days of the Order, **or by January 16, 2023**. *See* Order at Dkt. No. 2-1.

Instead, Gonzalez claims that he sent payment on January 16, 2023 and Plaintiffs just need to be patient while the district court “processes” the payment. However, nearly two months after the supposed payment, there still is no record of payment made nor has Gonzalez filed any proof of payment with either the District Court or this Court.

While Gonzalez's notice of appeal and delayed payment has effectively stayed the distribution of Settlement funds to over 1 million Settlement Class Members, in an abundance of caution, Plaintiffs' Counsel waited until the deadline for this response and then personally visited the Clerk's office at the Northern District of California to confirm whether any payment had been made or recorded (the electronic docket reflected no payment). *See* Exhibit A attached hereto, Declaration of Mark C. Molumphy ¶ 4. The Clerk searched the Court's records and confirmed there was no payment, nor record of an attempted payment by Gonzalez. *Id.* ¶ 5. The Clerk also confirmed that payments received by regular or priority mail are immediately recorded and take at most 1 or 2 days to process. *Id.* ¶ 6.

It has been over one month since the Court of Appeal's extended deadline came and passed (and almost two months since Gonzalez missed the original deadline). Gonzalez should not further delay the distribution of this settlement while at the same time flaunting the rules and orders of the Court. Gonzalez's request for a further extension should be denied and Plaintiffs' pending Motion to Dismiss Appellant's appeal should be granted (*see* Dkt. No. 3).

Respectfully submitted,

Dated: March 10, 2023

COTCHETT, PITRE & McCARTHY LLP

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Lead Counsel for Plaintiffs-Appellees and the Class

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

COTCHETT, PITRE & McCARTHY LLP

By: /s/ Mark C. Molumphy
Mark C. Molumphy

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, hereby certify that:

- 1) I am an employee in the office of Cotchett, Pitre & McCarthy, LLP;
and
- 2) On March 10, 2023 I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person hereinafter listed by depositing said envelope in the U.S. Mail, or by placing said copy into an interoffice delivery receptable located in our office of Cotchett, Pitre & McCarthy, LLP.

Alfred Gonzalez
1440 W Taylor Street #607
Chicago, IL 60607

Dated: March 10, 2023

Jeanine H. Acosta
Legal Assistant to
Mark C. Molumphy

By: _____

Jeanine H. Acosta

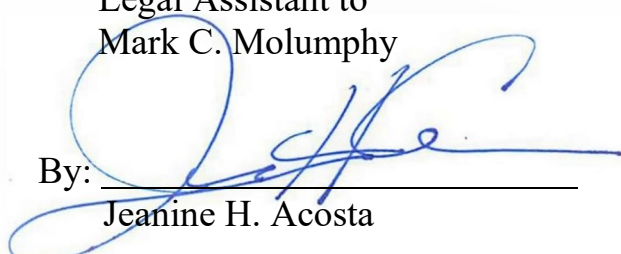


EXHIBIT A

DECLARATION OF MARK C. MOLOMPHY

I, Mark C. Molumphy, declare and state as follows:

1. I am a member of the bar of the State of California and duly licensed to practice before all courts of the State of California as well as other federal courts. I am a partner at the law firm of Cotchett, Pitre & McCarthy LLP (“CPM”).

2. I am one of the co-lead Class Counsel in this matter. I have personal knowledge of the facts stated below and the proceedings in this case. If called as witnesses, we would and could competently testify thereto to all facts within our personal knowledge.

3. I submit this declaration in support of Plaintiffs-Appellees’ Opposition to the “Motion for Extension of Time to Let the Lower Court Process the Appeal Fee.”

4. On March 9, 2023, I personally visited the Office of the Clerk of the Northern District of California located at 450 Golden Gate Avenue, San Francisco, California 94102.

5. At my request, the Clerk of the Court searched the Court’s records, and then asked her direct supervisor to perform an additional search, and

confirmed to me that the Clerk received no payment from, nor a record of any attempted payment by, Gonzalez.

6. The Clerk also confirmed that all payments received by regular or priority mail are immediately recorded by the Clerk, and that payments by check or money order are processed within 1 to 2 days of being received.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 10th day of March, 2023, by Mark C. Molumphy in Burlingame, California.

/s/ Mark C. Molumphy
Mark C. Molumphy